Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Development of a National Framework to Detect and Deter Backsliding to Ensure Continued Bell Operating Company Compliance with Section 271 of the Communications Act Once In-Region InterLATA Relief is Obtained	)	RM 9474

Comments of CoreComm Limited In Support of Petition for Expedited Rulemaking

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CoreComm Limited ("CoreComm"), by its counsel, hereby submits these Comments in support of the Petition for Expedited Rulemaking ("Petition") filed by Allegiance Telecom, Inc. ("Allegiance") on February 1, 1999. Allegiance has highlighted a serious problem that needs to be addressed by this Commission now — before the Bell Operating Companies ("BOCs") are granted Section 271 authority to provide in-region long distance services — in order to ensure that "backsliding" does not occur. There can be little doubt, based on their past and current practices, that the BOCs will exploit every opportunity to renege on their statutory market-opening duties to the detriment of competitive local exchange carriers ("CLECs") such as CoreComm and their customers.

I. STATEMENT OF INTEREST

CoreComm is a fast-growing, diversified provider of communications services publicly traded on the NASDAQ stock exchange under the symbol "COMMF". For the past year, CoreComm (through one of its subsidiaries) has been reselling Ameritech local exchange and other telecommunications services to both residential and business customers in the State of Ohio. In addition, subsidiaries of CoreComm are currently authorized to provide competitive long exchange and long distance services in New York, California, Massachusetts, and

Wisconsin, and other subsidiaries have applications for pending for authority to provide competitive local and long distance services in numerous other states.[1] CoreComm is thus expanding the geographic scope of its operations and, with the implementation of the company's recently announced "SMART LEC" network strategy and the acquisition of MegSInet, Inc., a fast growing national Internet network and regional telecommunications provider, is moving forward swiftly toward the provision of service over its own facilities.[2]

II. DISCUSSION

A. The Commission Should Anticipate, and Guard Against, Backsliding by the BOCs.

The recent third anniversary of the enactment of the Telecommunications Act of 1996 was marked by a flurry of speculation over how quickly each of the BOCs would satisfy the requirements of the Section 271 competitive checklist and gain entry into the long distance market in their respective regions. CoreComm and other CLECs are ready and willing to acquire new customers and move forward with their efforts to introduce enduring competition to local telecommunications markets, but they must have access to monopoly LEC facilities and systems in order to compete effectively. Without question, the BOCs have only grudgingly and haltingly taken the first steps toward opening the door to local competition; the BOCs' conduct only serves to demonstrate the truth of the saying that "neither a tiger nor a monopolist can change its stripes."[3]

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[1] On February 19, 1999, CoreComm entered into an Asset Purchase Agreement (the "Agreement") with USN Communications, Inc. ("USNC") to acquire substantially all of the assets of USNC (excluding the assets of USN Wireless, Inc.), free and clear of all liens, claims and other encumbrances except as expressly assumed in the Agreement. Concurrently, on February 18, 1999, USN and 12 of its subsidiaries filed petitions for voluntary bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. Consummation of the proposed sale is subject to approval of the U.S. Bankruptcy Court for the District of Delaware and various regulatory authorities.

[2] On February 18,1999, CoreComm announced the formation of the first "Smart Local Exchange Carrier" (Smart LEC) strategy in the U.S., and took a major step forward by signing a definitive agreement to acquire MegSInet, Inc., a national ISP and competitive local exchange provider with an advanced IP/ATM network serving nearly 60 major cities across the United States.

[3] Numerous examples of BOC foot-dragging were cited in a recent article, "Ok, You Can Come In, But You Can't Use the Bathroom Alone" *Wall Street Journal*, p. A1, March 5, 1999.

CoreComm submits that maintaining a narrow focus only on the question of whether or not the BOCs' have satisfied the threshold requirements of the competitive checklist, without also considering the BOCs' longer-term adherence to those requirements, would be incredibly shortsighted. CoreComm agrees with Allegiance that ***now*** is the time to look beyond the point when a BOC demonstrates initial compliance with the checklist and consider the next phase of implementation of the Act, when the Commission is obligated to ensure the preservation of conditions favorable to robust competition. This crucial period — before the grant of a BOC application for Section 271 authority — provides the Commission with a unique opportunity. By acting now, the Commission can help to ensure that BOCs, once they gain entry to the long distance market, will not retreat from their obligations and slam the door shut in the CLECs' faces. Past and present BOC behavior demonstrates that, left to their own devices, the BOCs would seek to remonopolize the local exchange market and thereby deprive consumers of the lasting ability to enjoy the range of innovative, high-quality and reasonably priced services that a competitive local exchange market can effectively deliver.

The ease with which the BOCs could destroy nascent competition, in the absence of effective safeguards, should not be underestimated. The transition of a customer's service from one LEC to another involves a complex (often, far too complex) series of coordinated transactions between old and new providers. The very nature of the process affords the BOC (or other ILEC) numerous and often subtle opportunities to undermine the new entrant's efforts to provide a seamless transition with a minimum of effort and inconvenience on the part of the customer. The BOCs' failure to provide adequate staffing and other resources, delays in order processing and provisioning, and unreasonable restrictions on CLEC access to essential facilities and systems can serve (either individually or in combination) to undermine the CLECs' efforts to deliver high-quality, reliable and economical telecommunications services to consumers. Unfortunately, however, transitioning customers often fail to appreciate the fact that the

difficulties that they may have experienced in making the transition were created solely by the actions of the BOC. Instead, such difficulties are often unfairly attributed to the actions of the new provider, thus giving the CLEC an undeserved reputation as inept or unreliable and undercutting the CLEC's ability to expand its customer base. Given past BOC practices and current inclinations, there is little reason to expect that such behavior will not continue, perhaps with renewed vigor, once they are granted entry into the long distance market. Simply put, there will never be a better opportunity for the Commission to adopt effective measures to guard against BOC backsliding. Indeed, this may be the Commission's "last, best" opportunity to establish such pro-competitive safeguards.

B. Rules Implementing the Commission's Section 271 Enforcement Authority are Needed.

As noted by Allegiance, Section 271(d)(6) of the Communications Act of 1934, as amended (the "Act"), expressly provides the Commission with authority to enforce BOC compliance with the market-opening provisions of the Act in the post-Section 271 era. Specifically, once the Commission has determined that a BOC has ceased to comply with its obligations under Section 271, the Commission may: 1) issue an order directing the BOC to correct the deficiency; 2) impose a penalty upon the BOC in accordance with Title V of the Act; and/or 3) suspend or revoke the BOC's Section 271 authority.

In the absence of clear and detailed performance standards and a well-defined and reasonably expeditious process for enforcement, the mere existence of a legal remedy may do little to protect emerging competition. The resources of any BOC within a given state will, for the foreseeable future, vastly outweigh those of any single CLEC or even group of CLECs combined. Unless the Commission adopts a comprehensive national framework for facilitating the detection of backsliding and a clear set of rules that spell out precisely how Section 271 will be enforced if backsliding should occur, the BOCs will almost inevitably seek to outmaneuver, outgun and outwait the CLECs in every instance where backsliding is alleged.

The Allegiance petition for rulemaking is both appropriate and timely. CoreComm submits that commencement of a rulemaking intended to develop a national framework of performance standards and enforcement mechanisms is by no means premature. CoreComm strongly supports the initiation of the rulemaking requested by Allegiance and urges the Commission to issue a Notice of Proposed Rulemaking as soon as practicable.

C. In Crafting A National Framework, the Commission Should Look to Best Available Standards Developed in the States.

CoreComm supports Allegiance's recommendation that the Commission craft national minimum performance standards and procedures based on the best available practices, such as the work done on OSS and collocation issues by the New York and Texas commissions. Although the Commission has already initiated proceedings to address some matters, including collocation and operational support systems ("OSS"), commencing a new proceeding, as recommended by Allegiance, would be helpful in several respects. Interested parties would have an opportunity to comment on these issues in greater depth (building, as appropriate, on the state commissions' experience and expertise). At the same time, parties would have an initial opportunity to present their views to the Commission on performance standards for other competitive checklist items. The Commission could solicit comments on each checklist item separately, and, for each item, seek comments on four topics: 1) the need for backsliding prevention measures related to that item; 2) identification of the best practices now in effect in the states; 3) which of the existing state requirements would best serve as minimum federal standards; and 4) any further refinements and improvements that may be appropriate.

The efforts of state commissions have been based upon limited information, and their efforts have properly and necessarily focused on state-specific conditions. It is likely that the

"state of the art" will continue to evolve, as regulators and interested parties grapple with the complex set of issues surrounding local competition. It is important that the Commission build upon the best available practices in establishing minimum federal standards.

D. A Strong Federal Role in Preventing Backsliding is Crucial.

As noted above, the Commission has clear legal authority to enforce BOC compliance under Section 271. Although the states will undoubtedly play a major role in overseeing BOC compliance as they continue to regulate intrastate services, the Commission has primary responsibility for overseeing BOC compliance in the post-Section 271 era, through swift and strong enforcement measures. However, the Commission's role in the prevention of backsliding should extend beyond the mere imposition of penalties where backsliding is found to have occurred. There is clearly a need for a strong national anti-backsliding framework to serve as a deterrent to BOC misconduct and an additional measure of protection for competition. If backsliding were handled in an incremental, *ad hoc* fashion with standards and penalties developed through adjudication, both the BOCs and the CLECs would face uncertainty as to the enforcement process and the penalties associated with backsliding. On the other hand, by taking a leadership role in establishing a national framework, the Commission may prevent much of the backsliding (an unnecessary litigation) that would otherwise occur as the consequence of uncertainty. Minimum federal standards are needed as a baseline. BOCs and CLECs will benefit from the increased certainty, and state commissions may adopt additional, more specific, requirements as local circumstances warrant. Minimum federal standards are necessary to address the plethora of anti-competitive BOC practices encountered by CLECs everywhere. These include, but are not limited to: unreasonable provisioning intervals, cumbersome order

entry procedures that fail to use available technology efficiently; overly restrictive or unreasonably discriminatory interconnection and collocation practices, and restricted access to BOC-controlled rights of way and other key facilities.

Minimum federal standards that govern these and other key aspects of the continuing relationship between BOCs and CLECs will minimize the ability of BOCs to use stonewalling and other well-known tactics to delay competitors' efforts to enter the local market. Minimum federal standards will also, as suggested above, reduce the number of issues that will otherwise require adjudication or arbitration in each state. Delay and legal uncertainty, both of which can easily result from BOC stonewalling or as the result of protracted and unnecessarily repetitive dispute-resolution efforts, are among the greatest problems faced by new competitive carriers. Minimum federal standards will help to minimize the delay and reduce the uncertainty new entrants face as they seek to build facilities and interconnect them with the incumbents' networks. Minimum federal standards will also be helpful insofar as they provide a baseline of expectations for potential CLEC investors, which should materially improve the ability of new entrants to attract financing.

E. The Commission Should Establish Rocket Docket-Like Section 271 Complaint Procedures.

Section 271(d)(6)(B) of the Act provides that "the Commission *shall* establish procedures for the review of complaints" concerning BOC backsliding, and further obligates the Commission to act on such complaints within 90 days. The swift resolution of backsliding complaints can best be accomplished through the establishment of a separate, accelerated processing track. The Commission should use the opportunity presented by the Allegiance

petition for rulemaking to develop a complaint review procedure specifically tailored to the needs of CLECs to minimize the delay in resolution of their disputes with BOCs, one that ensures that backsliding complaints are resolved within 90 days from filing, as required by law.

The recently established and well-regarded "Rocket Docket" may serve as a useful point of departure in this effort. In its present form, however, the "Rocket Docket" process cannot be relied upon to resolve backsliding complaints within 90 days. Once a BOC gains entry into the in-region long-distance market, the impetus that the Section 271 "carrot" provided to treat competitors fairly will disappear, and the balance in "negotiations" will tip dramatically in favor of the BOC. The BOC will have nothing to lose through delay. Once the shift in bargaining power has occurred, the prospects of successful resolution through pre-filing settlement discussions of the type required under the "Rocket Docket" approach zero. Elimination of the requirement that the parties engage in pre-filing settlement efforts, as well as other modifications, may be necessary in order further streamline the "Rocket Docket" procedure and adapt it to the particular requirements of Section 271(d)(6).

F. A Multi-Tiered Penalty Framework for BOC Non-Compliance Is Appropriate.

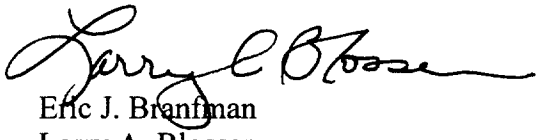
As noted in the preceding section, once a BOC gains entry into the long distance market, a dramatic shift in incentives will take place. Having secured the prize, the BOC will be far more likely to adopt a litigious, hard-line approach and far less likely to be receptive to the types of regulatory "suggestions" and "admonishments" that it might have heeded during its efforts to obtain Section 271 approval. The Commission should anticipate this shift, and seek public comment on remedies that will serve both as effective deterrents to BOC backsliding and as effective penalties to halt backsliding once it occurs. Admonishments or other slaps on the wrist

are unlikely to have any effect, and the potential financial rewards that a BOC would reap by stifling effective competition suggest that the effectiveness of conventional monetary forfeitures will be diminished. The approach discussed in the Allegiance petition, a multi-tiered framework of escalating sanctions, including monetary forfeitures, suspension or revocation of Section 271 authority and prescribed reductions in the prices charged to competitors for UNEs, resale and traffic termination, is worthy of further consideration.

III. CONCLUSION

CoreComm supports the initiation of an expedited rulemaking to consider the issues raised in the Allegiance Petition. As tempting as it may be for the Commission to focus its attention only the matters now pending before it and the expected next round of BOC Section 271 applications, the Commission should resist that temptation and look beyond that point, into the post-271 era. Once a BOC gains in-region long-distance authority, it will be too late to initiate the process of developing mechanisms for ensuring continued compliance with the Section 271 checklist requirements. CoreComm urges the Commission to promulgate minimum federal standards governing key aspects of the interrelationship between BOCs and CLECs, and to adopt a specific, accelerated procedure for handling Section 271 complaints. Finally, the Commission should adopt a multi-tiered system of penalties that will be sufficient to deter and, if necessary, remedy BOC backsliding.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Comments of CoreComm Ltd. In Support of Petition for Expedited Rulemaking" were served this 8th day of March, 1999, via Messenger** or U.S. Mail, postage prepaid, upon the following parties:

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